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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,493	12/04/2003	Marinus Struik	67539/482	7544
27871 7590 12/08/2008 BLAKE, CASSELS & GRAYDON LLP BOX 25, COMMERCE COURT WEST 199 BAY STREET, SUITE 2800 TORONTO, ON M5L 1A9 CANADA			EXAMINER CHOUDHURY, AZIZUL Q	
			ART UNIT 2445	PAPER NUMBER
			MAIL DATE 12/08/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/726,493

**Applicant(s)**

STRUIK, MARINUS

**Examiner**

AZIZUL CHOUDHURY

**Art Unit**

2445

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 September 2008.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 and 14-20 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-3 and 14-20 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/888)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

***Detailed Action***

This office action is in response to the correspondence received on September 29, 2008.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 14-20 rejected under 35 U.S.C. 103(a) as being unpatentable over Brightwell (US Patent Number: 5,265,103) in view of Fauconnier et al (US Patent Number: 6,909,887), hereafter referred to as Brightwell and Fauconnier, respectively.

1. With regards to claim 1, Brightwell teaches through Fauconnier, a method of representing a frame counter used in communication between a sender and a receiver, the frame counter having a first component representing an encoded frame counter and a second component representing a sequence counter, the method comprising the steps of: a) maintaining said sequence counter and frame counter at the sender (*Brightwell teaches messages to be transmitted (i.e. at the sender) are grouped into frames and sequenced; see column 1, lines 46-50 and column 2, lines 31-32, Brightwell*); b) establishing an updated value of the frame counter as the next value in a direction of counting from the current value

of the frame counter that is congruent to the sequence counter modulo the size of the sequence counter (*Brightwell teaches the incrementing of the sequence counter for each frame; see column 4, lines 10-15 and column 2, lines 54-57, Brightwell*); and c) computing an encoded value of the frame counter by removing from the frame counter a component equal to the value of the sequence counter such that the updated frame counter is uniquely recoverable from said encoded value of the frame counter and said sequence counter (see column 3, lines 13-26, *Brightwell*).

*While the Brightwell reference does teach the counting of frames, it does not explicitly cite the counting of frames congruent modulo of the sequence counter size. In the same field of endeavor, Fauconnier teaches such a calculation; see column 10, line 25, Fauconnier. Such calculations help break down packets into sizes that help communication flow. Therefore it would have been obvious to one skilled in the art, during the time of the invention, to have combined the teachings of Brightwell with those of Fauconnier for controlling communication; see column 7, lines 26-30, Fauconnier.*

2. With regards to claim 2, Brightwell teaches through Fauconnier a method wherein the sequence counter is updated each time a message is sent (see column 3, lines 65-68, *Brightwell*).

3. With regards to claim 3, Brightwell teaches through Fauconnier a method wherein the frame counter is congruent to the sequence counter modulo 256 (*see column 10, line 25, Fauconnier*).
4. With regards to claim 14, Brightwell teaches through Fauconnier a method wherein the frame counter is recovered by concatenating the encoded frame counter value with the sequence counter (*see claim 2, Brightwell*).
5. With regards to claim 15, Brightwell teaches through Fauconnier a method wherein the encoded value of the frame counter is 3 bytes in length (*see column 2, line 30, Brightwell*).
6. With regards to claim 16, Brightwell teaches through Fauconnier a method of transmitting messages from a sender to a recipient over a wireless channel, the order of messages being identified by a frame counter having a first component representing an encoded frame counter and a second component representing a sequence counter, said messages including a value representing the sequence counter, the method comprising the steps of: a) establishing an initial value for the frame counter at said sender (*Brightwell teaches initialization; see column 3, lines 29-35, Brightwell*); b) providing the initial values representing said frame counter and said sequence counter to said recipient (*Brightwell teaches initialization; see column 3, lines 29-35, Brightwell*); c) subsequently sending messages including the values of the sequence counter and not the encoded frame counter (*Brightwell teaches messages to be transmitted (i.e. at the sender)*

*are grouped into frames and sequenced; see column 1, lines 46-50 and column 2, lines 31-32, Brightwell); d) periodically sending messages including the value of the frame counter according to predefined criteria; e) updating the value of said sequence counter (Brightwell teaches the incrementing of the sequence counter for each frame; see column 4, lines 10-15, Brightwell); and f) establishing the next value of the frame counter as the next value in a direction of counting from the current value of the frame counter that is congruent to the sequence counter modulo the size of the sequence counter (Brightwell teaches the incrementing of the sequence counter for each frame; see column 4, lines 10-15, column 2, lines 54-57, and column 4, lines 44-51, Brightwell).*

*While the Brightwell reference does teach the counting of frames, it does not explicitly cite the counting of frames congruent modulo of the sequence counter size. In the same field of endeavor, Fauconnier teaches such a calculation; see column 10, line 25, Fauconnier. Such calculations help break down packets into sizes that help communication flow. Therefore it would have been obvious to one skilled in the art, during the time of the invention, to have combined the teachings of Brightwell with those of Fauconnier for controlling communication; see column 7, lines 26-30, Fauconnier.*

7. With regards to claim 17, Brightwell teaches through Fauconnier a method wherein the predefined criteria are when a predetermined number of messages including the value of the sequence counter and not the encoded frame counter are sent (see column 4, lines 10-15, Brightwell).

8. With regards to claim 18, Brightwell teaches through Fauconnier a method wherein the predetermined number is in the range 2 to 10 (*see column 4, lines 10-15, Brightwell*).
9. With regards to claim 19, Brightwell teaches through Fauconnier a method wherein said update is an increment (*Brightwell teaches the incrementing of the sequence counter for each frame; see column 4, lines 10-15 and column 2, lines 54-57, Brightwell*).
10. With regards to claim 20, Brightwell teaches through Fauconnier a method wherein the sender monitors for an acknowledgement of receipt of said message by said recipient and the predefined criteria are when no acknowledgement is received (*see column 2, lines 53-54, Brightwell*).
11. The obviousness motivation applied to claims 1 and 16 are applicable to their respective dependent claims.

### ***Response to Arguments***

Applicant's arguments filed September 29, 2008 have been fully considered but they are not persuasive. In lieu of the latest claim amendments, the claim objection has been withdrawn. In addition the applicant's explanations provided with respect to the 112 rejection are deemed persuasive hence, that rejection has been withdrawn as well. The remaining arguments are titled as being directed towards the 112 rejection but the arguments themselves seem to be arguing the 103 rejection (starting on p. 5). The

examiner is interpreting the remaining arguments as being directed towards the 103 rejection under the assumption that the 112 rejection title within p. 5 of the arguments was a typographical error.

The first point of contention involves the claim limitation of: computing an encoded value of the frame counter by removing from the frame counter a component equal to the value of the sequence counter such that the updated frame counter is uniquely recoverable from said encoded value of the frame counter and said sequence counter. The applicant contends that the cited column 3, lines 13-26 of Brightwell fails to teach such a limitation, the examiner respectfully disagrees. The contended claim limitation remains convoluted and the applicant has not provided a clear argument explaining as to what is truly meant by the claim language and how it is novel. The applicant has only contended that the exact language is not present within the prior arts. Exact language does not need to be present within a prior art, the prior art need only teach the features taught by the claim limitations. The examiner disagrees with the applicant's contentions because the examiner does believe that the features taught by the claim limitation are taught by Brightwell. As the claim language stands, the best interpretation that can be extrapolated is that a value for the frame counter is determined by taking a value equal to the sequence counter. That value is unique to the frame and sequence counter value. Brightwell teaches such a feature within column 3, lines 13-26. Within column 3, lines 13-26, it is taught that the frames are each counted and assigned a sequence number in a unique order. The frames are received in a predetermined order (sequence) so the frame number can be equivalent to the



sequence number. If the applicant disagrees with this interpretation, the applicant needs to clearly explain what is being taught by the claim limitation (not simply a recitation of the claim language) and explain how the current language supports such a teaching and how it is novel over the cited prior arts.

The second point of contention involves the claim limitation of: establishing an updated value of the frame counter as the next value in a direction of counting from the current value of the frame counter that is congruent to the sequence counter modulo the size of the sequence counter. The applicant contends that Fauconnier fails to teach such a claim limitation, the examiner disagrees. The examiner combined the teachings of both Brightwell and Fauconnier to reject this claim limitation. Brightwell teaches the incrementing of the sequence counter for each frame; see column 4, lines 10-15 and column 2, lines 54-57, Brightwell. However while the Brightwell reference does teach the counting of frames; Brightwell does not explicitly cite the counting of frames congruent modulo of the sequence counter size. In the same field of endeavor, Fauconnier teaches such a calculation; see column 10, line 25, Fauconnier. Such calculations help break down packets into sizes that help communication flow. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The third point of contention involves the claim 16 limitations of b) providing the initial values representing said frame counter and said sequence counter to said

recipient and c) subsequently sending messages including the values of the sequence counter and not the encoded frame counter. The examiner respectfully disagrees. Brightwell teaches initialization (equivalent to the claimed providing initial values representing said frame and sequence counter); see column 3, lines 29-35, Brightwell. In addition, Brightwell also teaches messages to be transmitted (i.e. at the sender) are grouped into frames and sequenced (equivalent to the claimed sending messages including the values of the sequence counter and not the encoded frame counter); see column 1, lines 46-50 and column 2, lines 31-32, Brightwell). The applicant then continues by contending that neither arts teach a frame counter having an encoded frame counter and a sequence counter. First, the contended limitation is within the preamble and need not be given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Second, Brightwell teaches a frame sequence counter that counts frames and assigns sequence numbers to each frame (inherently counting the sequence if is to assign a sequence); See column 3, lines 21-22, Brightwell.

Finally the applicant contends that the Fauconnier prior art fails to teach the claimed: establishing the next value of the frame counter as the next value in a direction of counting from the current value of the frame counter that is congruent to the

sequence counter modulo the size of the sequence counter. The examiner respectfully disagrees. The examiner combined the teachings of both Brightwell and Fauconnier to reject this claim limitation. Brightwell teaches the incrementing of the sequence counter for each frame; see column 4, lines 10-15, column 2, lines 54-57, and column 4, lines 44-51, Brightwell. While the Brightwell reference does teach the counting of frames, it does not explicitly cite the counting of frames congruent modulo of the sequence counter size. In the same field of endeavor, Fauconnier teaches such a calculation; see column 10, line 25, Fauconnier. Such calculations help break down packets into sizes that help communication flow. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AZIZUL CHOUDHURY whose telephone number is (571)272-3909. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess can be reached on (571) 272-3949. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patrice Winder/  
Primary Examiner, Art Unit 2445

/A. C./  
Examiner, Art Unit 2445

